IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5484 of 1990

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WITH
SPECIAL CIVIL APPLICATION NO 5487 OF 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DECEASED SAKARLAL D PATEL THRO HIS HEIRS

Versus

SURAT CENTRAL COOPERATIVE STORES LTD

Appearance:

MRS DT SHAH for Petitioners
MR KH BAXI for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 23/06/2000

ORAL JUDGEMENT

All these four petitions are taken up together for hearing as these involves same question of fact and law. I have heard Mrs. D.T. Shah learned counsel appearing on behalf of the petitioners and Mr. K.H. Baxi, learned counsel appearing on behalf of respondent Surat Central Cooperative Stores Limited. The petitioners were working as Delivery Man with the respondent Society (store) for delivery of gas cylinders to the respective houses of the consumers. It is alleged that, they were working since 1977 and the respondent Cooperative Society has terminated their services by an order dated 6-1-1987. All the petitioners in each of the petitions alleged to have been working under the respondent Cooperative Society, have taken up the matter with the Government and the Government referred the disputes of these workmen to the Labour Court, Surat and five Reference Cases were registered by the Labour Court, being Ref. (L.C.S.) No. 496/81, 493/81, 499/81, 500/81 and 504/81. All these references were taken together by the Labour Court and disposed of by common judgment & award. Learned counsel for the petitioners in all these petitions submitted that the delivery man working in the Cooperative Society can be treated as Workman as they are covered by the definition of Section 2 of the Industrial Disputes Act, 1947. Learned counsel also submitted that there was no material before the Labour Court to come to a conclusion that the relationship of master and servant has not been established between the workmen and the respondent Society. Learned counsel further submitted that these delivery men were working under the respondent Cooperative Society since 1977 and since they have worked till the end of 1980 there is no reason for the respondent Cooperative Society to terminate the services of the petitioners by order dated 6-1-1981. Learned counsel for the petitioners submitted that, since these workmen were working under Cooperative Society for more than three years, they should have been regularised as permanent employees of the Cooperative Society. Learned counsel consequently submitted that the Labour Court committed an error in holding that the relationship of master and servant have not been proved by any evidence and therefore the order of the Labour Court passed by common judgment & award should be required to be quashed.

3. I have heard Mr. Baxi learned counsel appearing on behalf of the respondent Cooperative society. Mr. Baxi submitted that these delivery men were not engaged by the respondent Cooperative society and they were not paid any fixed salary or wages. These persons used to deliver the gas cylinders at the houses of the consumers

against which they were paid certain amount. It is also stated by learned counsel for the respondent that for delivery of each gas cylinder the amount is paid to the delivery men. The amount may vary, depending upon the distance between residence of the consumer and the Cooperative Society. There was no fixed salary or wage on monthly basis paid to the delivery men. When there is no stock of gas cylinders with the society, petitioners do not have any work and their services were utilised only when gas cylinders were available in the stock of the Society. Having regard to the nature of the work performed by the petitioners they cannot be treated as workmen within the meaning of Section 2 (s) of the Industrial Disputes Act. Learned counsel further submitted that the Labour Court has given reasons for dismissing the reference. It is submitted that the Labour Court after considering the evidences has come to the conclusion that the relationship of master and servant has not been proved by any evidence and they have not even completed 110 or 240 days in a year. Further there is no control of the respondent Society over these delivery men. The Labour Court has also given reasons that mere issuing of identity card by the respondent Corporation to these delivery men do not prove the relationship of master & servant between the Society and the petitioners. Therefore the judgment & award passed by the Labour Court, by dismissing the references have given sufficient reasons and I have not found any ground to interfere with the judgment & award passed by the Labour Court. Therefore I am of the view that the Labour Court has correctly held that there is no relationship between the Society and the delivery men and no error has been committed by the Labour Court in deciding the references. I do not find any ground to interfere with the findings of the Labour Court. Accordingly all these petitions are dismissed. Rule discharged in each of the petitions. However, I make no order as to costs.

Dt: 23-6-2000

(P.K. Sarkar, J)

/vgn.